

**BEFORE THE FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION**

**INQUIRY CONCERNING A
JUDGE, NO. 01-244**

CASE NO.: SC01-2670

EMERGENCY MOTION TO COMPEL

COMES NOW, the Honorable Charles W. Cope by and through undersigned counsel and hereby files this motion to compel requesting this Hearing Panel to order Special Counsel to produce the witness interview conducted by the Judicial Qualifications Commission and in support thereof states:

1. Pursuant to Florida Judicial Qualifications Commission Rule 12(b) Judge Cope made a written demand for the names and addresses of all witnesses whose testimony the special counsel expects to offer at the hearing, together with copies of all written statements and transcripts of testimony of such witnesses in the possession of the counsel or the investigative panel which are relevant to the subject matter of the hearing and a list of all documents in the possession of the special counsel not provided with this demand (See demand for Rule 12(b) materials dated December 11, 2001 attached as Exhibit A).

2. In response to Judge Cope's request Special Counsel John Mills refused to identify any witnesses and did not disclose the existence of any reports and further claimed, notwithstanding that the Respondent's request expressly tracked the language of Rule 12(b), that Respondent's request was beyond the scope of the Rule and overly broad.

3. Thereafter Special Counsel provided the names of five witnesses and further advised the undersigned that Investigator Robert Butler had interviewed principal witness Nina Jeanes on October 22, 2001, and had prepared a report of such interview which had in fact been submitted to the JQC prior to the determination to file formal charges against the Respondent.

4. Special Counsel has acknowledged that Nina Jeanes was interviewed by JQC Investigator Robert Butler on October 22, 2001. He has further acknowledged that Robert Butler has prepared a report of that interview and that such interview was considered by the JQC prior to the determination of probable cause against the Respondent. Request for that report was made by demand on December 11, 2001 and Special Counsel has refused to produce such report.

5. Special Counsel has advised the undersigned of circumstances which render this case indistinguishable from the precedent set in the matter of *Inquiry Concerning a Judge: Cynthia A. Holloway*, No. 00-143, Case No. SC00-2226. Notwithstanding the order of the Supreme Court directing the JQC to turn over identical reports in that case, Special Counsel has advised that he has been “instructed” by party or parties unknown to decline to follow the precedent in *Holloway*¹. In addition Special Counsel read the Butler report to the undersigned without waiving his right to object to its production to the undersigned. While the undersigned does not have and could not have a verbatim transcript of such report, it is clear that the report contains exculpatory information with respect to the Respondent. The report additionally contains vital impeachment evidence against both Nina Jeanes and her daughter Lisa Jeanes with respect to core allegations in this matter. Specifically, the JQC in its notice of charges and in discovery propounded has asserted the position that the Respondent was highly intoxicated when he encountered the witnesses on the early morning hours of April 4, 2001. Nina

¹ On information and belief, such instructions were issued by Thomas McDonald, counsel to the JQC.

Jeanes was asked by Investigator Butler if the Respondent was intoxicated at that time; to which the respondent replied that she was unable to make such an observation.

6. Respondent has scheduled the discovery deposition of Nina Jeanes and Lisa Jeanes on January 22 and 23, 2002, respectively. Respondent has need of the report of Robert Butler for the purpose of examining the witnesses.

7. Respondent requests a hearing on this motion.

WHEREFORE, it is respectfully requested that this panel order Special Counsel to immediately turn over the report of interview of Nina Jeanes to the Respondent.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and U.S. Mail to: **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Avenue, Miami, Florida 33175-1716; **John Beranek, Esq.**, Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32302; **John S. Mills, Esq.**, Special Counsel, Foley & Laudner, 200 Laura Street, Jacksonville, Florida 32201-0240; **Brooke S. Kennerly**, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602, **Louis Kwall, Esq.**, Co-Counsel for Respondent, 133 North Ft. Harrison Avenue, Clearwater, Florida 33755; this 16th day of January, 2002.

ROBERT W. MERKLE, ESQ.